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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,551	08/20/2003	Lisa Schmitt	P 1079.13001	6636
30615	7590	09/27/2005	EXAMINER	
BIRDWELL & JANKE, LLP 1100 SW SIXTH AVENUE SUITE 1400 PORTLAND, OR 97204			BUI, LUAN KIM	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,551

Applicant(s)

SCHMITT, LISA

Examiner

Luan K. Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 13-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/20/03</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 13-15 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/15/2005.

Applicant's "traverse" of the requirement for election of species is noted. Asserting that "claims 13-15 have nothing to do with making any product ... to using the product for measuring and storing food" is noted. This is not persuasive because claims 13-15 are directed to the method of making a product by filling the compartment with the food and freezing the food because the product as claimed can be filled with different items except for food and without freezing.

The requirement is still deemed proper and is therefore made **FINAL**.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, the phrase "that corresponds to the elevation at which ice ... when melted" is vague, confusion and indefinite because claim 1 is directed to a container only without contents.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraenkel (6,311,500) in view of Shepherd (2,863,305) or Hughes (5,520,278). Fraenkel discloses a storage container (10, 20, 100) comprising a plurality of compartments (12, 22) defining respective maximum filling elevations thereof (top edges of the compartments) in a stable orientation of the container. Fraenkel further discloses each compartment may not be filled to the top but rather about six percent of the compartment may be left empty to allow the water in the compartment to expand during freezing (column 2, lines 45-48) which is considered equivalent to the at least one fill level is at a level below the respective maximum filling elevation. Fraenkel also discloses the other claimed limitations except for the at least one fill level comprises indicia indicating the position of the at least one fill level. Shepherd teaches a transparent bag (11) having indicia (12) indicating the position of at least one fill level of water (14) into the bag. Hughes shows a measuring cup/container (10, 18) comprising a compartment having a top edge/maximum filling level and at least one indicia indicating the position of at least one fill level below the maximum filling level. It would have been obvious to one having ordinary skill in the art in view of Shepherd or Hughes to modify the container of Fraenkel so each compartment includes an indicia indicating the position of the at least one fill level to provide more convenient for the user when filling the compartments.

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As to claims 3 and 4, Fraenkel discloses the container formed from a transparent plastic material and the compartments are integrally molded with the container.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Connable (386,383). Fraenkel further fails to show the compartments being formed removable partitions. Connable shows a container comprising a plurality of compartments and the compartments defined by a plurality of removable partitions (d). It would have been obvious to one having ordinary skill in the art in view of Connable to modify the container of Fraenkel as modified so the compartments are formed from removable partitions to allow the user to adjust the size of the compartments.

7. Claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Andress et al. (5,356,026; hereinafter Andress'026). The multiple containers (20) of Fraenkel are capable of stacking with one on top the other. However, Fraenkel further fails to show the container includes a lid being adapted to snap-fit onto the container. Andress'026 suggests a container assembly (10) comprising a container (12) and a lid (11) adapted to snap-fit (52, 55, 60, 61). Andress'026 further suggests the container includes a bottom surface (25-27) complementary to the lid (13, 14) so that multiple instances of the container with the lid fitted thereon are stackable. It would have been obvious to one having ordinary skill in the art in view of Andress'026 to modify the container of Fraenkel as modified so the container includes a lid adapted to snap-fit onto the

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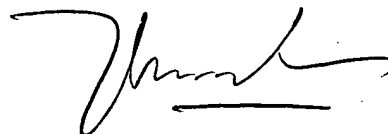
container for better securing the contents within the container and the container are stackable to reduce space during storage.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ms. Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (571) 273-8300 for Formal papers and After Final communications.

lkb
September 23, 2005

A handwritten signature in black ink, appearing to read 'Luan K. Bui', with a horizontal line underneath.

Luan K. Bui
Primary Examiner